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July 21, 1995

EX PARTE OR LATE FILED

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED

JUL 21 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: **EX PARTE**
CC Docket No. 92-77
(Billed Party Preference)

Dear Mr. Caton:

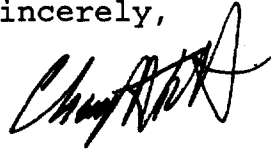
Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, Citizens for the Rehabilitation of Errants ("C.U.R.E.") by this letter (including two copies) notifies the Commission that Charles Sullivan, executive director of C.U.R.E.; Christopher Holt of Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.; and the undersigned met today with Mary Beth Richards, deputy bureau chief of the Common Carrier Bureau to discuss matters related to the above-reference docket.

C.U.R.E. focused its discussion on positions presented in its Comments and Reply Comments filed in the above-reference docket. Specifically, C.U.R.E. elaborated upon its views regarding the implementation of a federal rate cap for phones installed for inmates in correctional facilities. C.U.R.E. also submitted the attached article from The Prison Mirror as part of its presentation.

MORRISON & FOERSTER

Mr. William F. Caton
July 21, 1995
Page Two

Sincerely,

A handwritten signature in black ink, appearing to read "Cheryl A. Tritt", with a stylized flourish at the end.

Cheryl A. Tritt

Attachment

cc: Mary Beth Richards
Charles Sullivan
Christopher Holt

"It's Never too Late to Mend"

THE

The Nation's Oldest Continuously
Published Prison Newspaper, Since 188"

PRISON

MIRROR

Volume 108 - Number 10

May 1, 1995

Stillwater, Minnesota

Unravelling the Phone Discord

By Alan Orfi, Editor

Minnesota prisoners are finding out that phone companies have been reaping rich rewards from the nation's tougher stances against crime. A single prison phone can gross as much as \$15,000 per year — nearly five times more than the average pay phone on a street corner.

There are several reasons why prison phones are so profitable for the companies. First, all long-distance calls must be made collect, one of the most expensive services. On top of that, the companies impose hefty surcharges on the recipients of prisoners' calls. Further, inmates' conversations tend to last longer than those of people on the outside. With automatic 15-minute disconnections such as we have here at Stillwater, prison phones can yield up to four hook-up charges per hour. The front-loaded charging of long-distance calls results in even more exorbitant costs for those inmates maintaining contact with people who live outside the Twin Cities.

According to an article which appeared in The Wall Street Journal, all this helps explain why AT&T and MCI have so aggressively sought out inmates' business. These two biggest carriers have been waging a fierce battle against the smaller and lesser known companies for control of over 50,000 pay phones in the roughly \$1 billion behind-bars business. Dana Motyl, an AT&T inmate-calls manager, acknowledged that captive customers represent "one of the only growth spots in the declining collect-call market." The nation's one million inmate callers are already big business and their ranks are expected to double by the year 2005 if current rates of incarceration continue.

Unlike free citizens, prisoners don't get to select their long-distance carrier. Phone companies have come to learn that, as with most other aspects of prison life, inmates' keepers hold the keys. Inmates and their families can and probably will continue to be gouged because there is little regulation of the rates charged.

The inmate phone system apparently will continue to soak prisoners' families with regard to their long distance calls because we cannot select our carriers. AT&T and MCI have established firm control over inmate phones and there is very little regulation over the rates set by these huge companies, so long distance calls will likely continue to cost a fortune.

However, we have actually caught a break with the local calls. Unlike most correctional facilities which are now requiring all inmate local calls to be placed as collect calls, the current system here at MCF-Stillwater allows us to make direct local calls. The cost of a local collect call today is \$1.45, so in comparison, our 25 cent charge per local call is actually a bargain. The big question that remains is whether or not the 25 cent charge will stay at that rate.

(Please see **Phone Discord** on page 10)

A Brush with the Law

By Victor Carter, Staff Writer

In folklore, the Iris is a symbol of hope, faith and valor. It gives encouragement to those who are suffering. In mythology, the Iris is the "Goddess of the Rainbow." Vincent Van Gogh found hope in his darkest days by painting Irises in the asylum garden at St. Remy.

For most prisoners, prison is where reality begins. The reality of being locked down in an 8 by 10 foot cement and steel cage is in itself a dreary asylum. Like Van Gogh did, prisoners can escape their darkest

days through art. Since 1977, Bill Murray, director of Stillwater's prison art class, has provided opportunities for convict artists such as Steve Krusel to look at their world in an artistic manner.

When a student enters into Murray's world of prison art he will be surprised to find the constant echoes of clanging keys and the slamming of metal doors replaced with a relaxed atmosphere in which to study. There are no uniformed officers stationed at brief intervals to detect the movement of every brush stroke. The

(Please see **Brush with Law** on page 5)

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(Phone) discord continued from page 1)

A very big advantage that the larger companies have in eliciting business from correctional facilities is their ability to provide the latest in monitoring technological advances. Eavesdropping equipment is a feature very popular with wardens. Though the phone companies generally don't manufacture such devices, they possess the capability to offer them — and they are usually free of charge. Stephen Gatewood, a security officer at the Massachusetts Correctional Institution explained that the AT&T system allows him to monitor all outgoing calls via an alarm that alerts officers whenever an inmate under suspicion dials out. "Phones have definitely become an investigative tool, just like informants and other types of surveillance techniques," Gatewood said.

The phone system used by corrections officials in Massachusetts is actually quite similar to the one that now exists at Stillwater. Inmates must accept a Personal Identification Number (PIN), all calls are subjected to monitoring and recording and are made by a recording announcing that the call is coming from a prison, the length of call is limited and the new system disallows use of third party and call waiting services.

Prisoners in Massachusetts have actively resisted the imposition of their new phone system. In fact, fewer than 10% of all prisoners there have been making calls on a regular basis. *Prison Legal News* reported last April of a successful phone boycott by Louisiana prisoners who protested dramatic rate increases. The loss in revenues forced the phone contractor, Global-Link, to reduce its rates. The inmate boycott in Louisiana, however, was supported by the prison administration which was unhappy with Global-Link's non-compliance with the contract it had signed. The boycott in Massachusetts has not yet yielded notable results chiefly because the new phone policy is part of a toughened stance by reactionary governor William Weld who has promised voters that he would make the state's prisons "like a tour through the nine circles of hell."

Each state's utilities commission and the Federal Communications Commission (FCC) are supposed to be regulating inmate phone service providers. However, utilities commissions in only twenty states are currently regulating the intrastate calls and the FCC has failed to provide any firm rate

guidelines on inmate interstate calls. But the FCC is now on record as favoring a proposal called Billed Party Preference (BPP) which will allow the persons paying for the call to select the carrier of their choice. Prison administrators do not appear to be willing to relinquish the control of the phones that these large phone companies can provide them. The Jan/Feb issue of *American Tails* advised prison administrators to oppose BPP as they would not only give up their increased security controls, they would also be losing their healthy commissions.

The best hopes inmates have for affecting change in the phone situation appear to be with the court system. Several challenges by prisoners seem to hold promise with regard to establishing case law that would afford all prisoners more rights. Inmates in Massachusetts have not only boycotted their new phone system — they are in the process of filing suit challenging that it is in violation of their constitutional rights. According to their attorney, Jim Pigeon, the main focus of their litigation will be on the inclusion of monitoring and taping provisions in their rules on prisoner phone use. Of particular concern is the limiting effect this will have on prisoners' ability to communicate with the outside, especially the media, attorneys and civil rights groups. Also, while the DOC maintains that the prisoners' acceptance of a PIN constitutes "consent", the complainants contend that such "consent" is not valid because no choice was given.

Another ongoing lawsuit with noteworthy implications for prisoners nationwide is a class action suit filed by women prisoners at a federal prison in Kentucky which challenges the federal Bureau of Prisons' (BOP) newly implemented inmate phone system. The plaintiffs challenge the new system on grounds of free speech, due process, the eighth amendment, equal protection and constitutional taxing powers. The suit also attacks the use of profits from the Commissary/Inmate Welfare Fund, a statutory trust, to purchase and operate the phone system when the welfare fund is supposed to be used as a trust for the benefit of prisoners, not for the BOP. On November 18, 1993, the court certified the suit as a nationwide class action suit on behalf of all federal prisoners throughout the U.S.

The Mirror has maintained an ongoing correspondence with Conchita Washington, one of the original inmates who filed the suit. She expresses grave concern that,

"The BOP would stop at nothing to win this suit and have unfettered control of inmate trust funds." Ms. Washington's fears have not been unfounded. Douglas L. McSwain, the attorney for the litigants, recently sent a memorandum to the inmate plaintiffs informing them that the BOP has caused a rider (Title VII) to a bill (H.R. 667) to be introduced into the new Congress. Title VII would abolish the Commissary Fund Trust and eliminate one of the legal bases for holding the BOP accountable for the way it spends the profits from commissary operations. Mr. McSwain stresses that this bill sets a very dangerous precedent for prisoners everywhere in that it effectively grants to the BOP a blank check for the expenditure of funds with no accountability to Congress or the courts.

While The Prison Mirror is in no way claiming that the administration here at MCF-Stillwater is paying for the new phone system with canteen profits, the significance of the forementioned bill is that, should it pass and become law, all correctional facilities could legally engage in such practices without impunity.

The implementation of new phone systems are another facet of the current trend in "get tough" policies. This particular attack is taking several tactics. First, are excessive rates, which are usually in excess of filed rates. Prisoner rights organizations and publications such as *Prison Legal News* believe that these excessive rates and kickbacks to DOCs should be deemed illegal. Second, many prisons are now restricting the number of people that can be called by each inmate. This affords prisons greater control on information and keeps the outside from knowing what is going on inside. Third, the monitoring and recording of inmate calls greatly chills prisoners' speech.

The net effect of these practices is that they further isolate and alienate prisoners, cut them off from their people and keeps society ignorant of prison conditions. These excessive phone rates serve as a highly regressive tax on those least able to afford it — prisoners' families.

